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SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA

October Term, 2000

In Re Donald Bedelle Fuller, Petitioner

On Petition for a Writ of
Certiorari to the
Minnesota Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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June 6, 2001

69 pp

QUESTIONS PRESENTED

The ultimate question, more than just legal in nature, is whether America, as a Republic, can long endure when Minnesota state employees and attorneys assist a "serial bankruptcy thief," obstruct federal justice and coerce, inhibit, and torture a federal attorney to silence him and to keep him from fulfilling his higher and different duties to the United States Courts as he also protected the United States Treasury against thefts.

Whether under Article VI, the Supremacy Clause of the United States Constitution and this Court's decisions in *McCullouch v. Maryland* and in *Commodity Futures Trading Commission v. Weintraub,* and the United States Code and resulting United States Supreme Court and Circuit Court of Appeals Decisions control an attorney's higher and different duties to the United States Bankruptcy Court and to the bankruptcy estate?

Whether 18 USC 4 and 18 USC 152 require a federal Debtor in Possession bankruptcy attorney to investigate and report "post-petition" thefts from the court supervised federal bankruptcy estate and from the United States Treasury?

Whether a Federal Bankruptcy attorney, in a Chapter 11 Debtor in Possession case, owes the highest duties and allegiance to the Bankruptcy Court as an officer of the court and as a fiduciary to the bankruptcy estate?

Whether 18 USC 1507, 1512, and 1513 permit any state Lawyer's Board attorneys to obstruct federal justice by coercing, threatening, harassing, and retaliating against a federal officer of the United States Bankruptcy Court,

and FBI informant, who must make reports required by 18 USC 4 and 152 and by this Court's decision in *Commodity Futures Trading Commission v. Weintraub,* and by the Eighth Circuit Court of Appeal decisions in *U.S. v. Dolan* and *Handeen v. LeMaire?*

Whether the Minnesota Rules of Professional Conduct punish a federal attorney for fulfilling the higher duties of a federal bankruptcy attorney under 18 USC 152 but reward Minnesota state "hired gun" attorneys who protect state thieves stealing both from the bankruptcy court supervised bankruptcy estate and from the federal treasury?

Whether Minnesota Lawyer's Board attorneys may be criminally prosecuted under 18 USC 1507, 1512, and 1513 for interfering with the investigation, the reporting and the higher and different duties of cooperation which a federal officer and an FBI informant owes to the United States Bankruptcy Court?

Whether Minnesota Rule of Professional Conduct 8.5 requires a federal attorney appearing in the United States Bankruptcy Court to perform higher duties to the Bankruptcy Court and to protect the bankruptcy estate against any ultra vires thief, who steals from the court supervised bankruptcy estate and then unlawfully utilizes Minnesota Lawyer's Board attorneys to harass and silence the federal attorney?

Whether a federal attorney is entitled to the privileges of free speech guaranteed by the First Amendment to the United States Constitution while making required reports both of federal bankruptcy crimes and Minnesota Lawyer's Board attorneys' obstruction of federal justice?

Whether the MRPC are an unconstitutional interference with a Chapter 11 Debtor in Possession attorneys freedom of association with the by operation of law clients, i.e., the U.S. Trustee, the IRS and state tax authorities and creditors and the federal duties to report thefts from the federal court supervised bankruptcy estate required by the growing body of federal case law and by 18 USC 4 and 152 of the United States Code?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

In Re Donald Bedelle Fuller, Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

Don B. Fuller respectfully petitions for a writ of certiorari to review the Decision of the Minnesota Supreme Court in case number CX-99-2061 entered on January 25, 2001 and captioned as In re Petition for Disciplinary Action against Donald Bedelle Fuller, an Attorney at Law of the State of Minnesota.

OPINION BELOW

The Opinion of the Minnesota Supreme Court, is contrary to Decisions of the United States Supreme Court and the 1st, 5th, 8th and 9th Circuit Courts of Appeal. The Opinion of the Minnesota Supreme Court ignored the higher and different federal duties of a Chapter 11 Debtor in Possession attorney as required by 18 USC 4, 152, and 1962. The Opinion of the state district court referee is not reported.

JURISDICTION

The Minnesota Supreme Court entered its Decision on January 25, 2001. That Decision is fully set forth in the Appendix and at 621 N. W. 2d 460, (MNSCT, 2001). The jurisdiction of this Court is invoked under 28 USC 1257 (a).

The Minnesota Supreme Court has ignored federal statutes, the decisions of federal courts of appeal, and has ignored important federal questions so that their decision conflicts with decisions of this Court and with decisions of the United States Courts of Appeal. The Minnesota Supreme Court decision threatens the United States Treasury and the Supremacy of the United States Government and ignores a federal attorney's highest duties to our Sacred Courts.

The Minnesota Supreme Court has decided an important question of federal law, i.e., the Supremacy of the Federal Bankruptcy Courts and interpreted the United States Bankruptcy and Criminal Codes in a manner which conflicts with decisions of this Court, specifically *Marbury v. Madison, McCulloch v. Maryland,* and *Commodity Futures Trading Commission v. Weintraub.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federalist Paper 51 long ago advised that ..."justice is the end of government."

Congress has acted to establish its Federal Bankruptcy Courts. Federal attorneys appearing in those Courts have higher and different federal duties under Article VI of the United States Constitution and this Court's Decisions in

McCulloch v. Maryland and *Commodity Futures Trading Commission v. Weintraub*, and the Eighth Circuit Court of Appeals cases of *U.S. v. Dolan* and *Handeen v. LeMaire*, and as required by 18 USC 2, 4, 152, 371, 1962 and the United States Bankruptcy Code to avoid assisting, and in fact to investigate and report, bankruptcy fraud and crimes than to fulfill conflicting duties that may be claimed as ethically required under the conflicting and subordinate Minnesota Rules of Professional Conduct (hereinafter MRPC).

The MRPC should never have been used by Minnesota state employees Cleary and Burns, in violation of 18 USC 1507, 1512, and 1513, to inhibit the speech of, Fuller, an officer of the federal court who was both protecting the United States Courts and fulfilling his superior and required duties to report "post-petition" federal bankruptcy crimes and fraud and thefts from the federal court supervised bankruptcy estate and from both the United States and Minnesota treasuries.

Despite the Decision of the Minnesota Supreme Court, under the First Amendment of the United States Constitution there must not be any limitation, by state of Minnesota employees or its Courts, on a federal court officer's free speech privilege or federal duty to report Minnesota Office of Lawyer's Professional Responsibility (hereinafter MN OLPR) employees engaged in federal obstruction of justice under 18 USC 1507, 1512, and 1513, or bankruptcy fraud in the United States Courts.

There is simply no exclusion, under 18 USC 1507, 1512, and 1513, that permitted MN OLPR Directors or attorneys to engage in federal obstruction of justice and to inhibit a federal officer of a federal court, also an FBI informant, from performing the duties mandated by 18 USC 4, 152, and 1392,

and by the decision in *Commodity Futures Trading Commission v. Weintraub* as well illustrated in the Eighth Circuit Court of Appeals cases of *U.S. v. Dolan* and *Handeen v. LeMaire.*

STATEMENT

This case involves matters of grave importance to the federal and state courts of America. It demonstrates that some members of the American legal profession, including state Lawyer's Board attorneys, present a clear and present danger to the welfare of our Courts and to our Sacred Republic.

This case should be reviewed as it presents the United States Supreme Court with the opportunity, if not the duty, to confirm *McCulloch v. Maryland* in an important federal matter; it demonstrates that attorneys are destroying our Sacred Courts; it demonstrates that Lawyer's Boards as the gatekeepers to the legal profession are failing in their duties; it illustrates that judges cannot make informed decisions when attorneys commit frauds on our Sacred Courts; and review and the resulting Decision may permit America alone to stand, in the future, as the country which may eternally best assure each citizen true equal access to justice.

Don Fuller, as a Certified Military Judge, settled into the civilian practice of law in Minnesota, predominantly as a federal bankruptcy attorney, and almost immediately he began to notice systemic attorney obstruction of federal and state justice.

Fuller has acted as a Debtor in Possession (hereinafter DIP) Chapter 11 counsel. As required by this Court's decisions

and the U.S. Code, he reported bankruptcy crimes and fraud while fulfilling the higher and different duties of a DIP attorney.

It also became necessary for Fuller to report the obstruction of federal justice by MN OLPR personnel who interfered with Fuller's duties both as an officer of the federal court and as an FBI informant. See Appendix.

Fuller maintained throughout the Lawyer's Board proceedings that federal statutes, 18 USC 2, 4, 152, 371, and 1962 and the Eighth Circuit Dolan and Handeen cases and this Court's Commodity Futures decisions require federal attorneys to fulfill higher and different duties to the Court, to the bankruptcy estate, and to the creditors and tax authorities than are required under the state's MRPC.

By the Congressional establishment of the United States Bankruptcy Court and this Court's Decision in *McCulloch v. Maryland,* it is clear that the Minnesota Supreme Court Decision is greatly flawed, that it ignores the great body of controlling federal law, that it ignores this Court's decisions, and that it must be reviewed.

A. Don Fuller, a federal attorney and FBI informant, acted properly to investigate, ferret out and report federal bankruptcy crimes and "post-petition" thefts both from the court supervised bankruptcy estate and from the United States Treasury

During 1995/1996 Fuller was the attorney for a DIP Chapter 11 "serial bankrupt" corporation and he also personally represented Pam Jordan. Hanson, the CEO of the DIP company, was personally represented by Minnesota attorney Hoilland.

Fuller learned from a third party that Hanson, a well known "serial bankrupt" and IRS employee trust tax thief, was stealing "post-petition" bankruptcy assets.

Fuller immediately withdrew from the corporation as DIP counsel. However Fuller remained as a "watchdog" to assure that the bankruptcy estate, the federal court, the creditors and the tax authorities were properly notified and also protected.

Fuller then made a report to the Attorney General of the United States who responded to Fuller through the Justice Department Organized Crime and Racketeering Division. As required, Fuller then became an FBI informant/witness.

Hanson was convicted by a federal court of felony thefts of the 401(k) funds from Fuller's client, Pam Jordan, which funds were in part also "post-petition" bankruptcy assets.

The MN OLPR erroneously applied state ethics rules to a federal bankruptcy attorney in a federal court by failing to acknowledge *McCulloch v. Maryland* and by failing to properly apply MRPC 8.5 which states as follows:

"A related problem arises with respect to practice before a federal tribunal where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them."

Despite Fuller's numerous letters, urging MN OLPR personnel to withdraw from aiding and abetting Hanson in violation of 18 USC 2, 4, 152, and 371, MN OLPR personnel persistently interfered with Fuller in violation of the federal criminal obstruction of justice statutes, 18 USC 1507, 1512 and 1513.

Hanson, while enabled and assisted by MN OLPR Director Cleary and OLPR attorney Burns, was permitted to have a gambling bookie during two more "serial bankruptcies" as Hanson allegedly stole another $950,000 of creditor and investor funds. While assisted/protected by the MN OLPR, Hanson actually stole another $55,000 of IRS employee trust taxes while Hanson was under federal court supervision for the felony theft charges/conviction.

B. Fuller, was tortured by the Minnesota OLPR personnel and Fuller's own retained attorneys

Fuller, alone it seems, was concerned about the serious damage Minnesota attorneys were causing to the Courts, to the Judiciary, and to the public by permitting other Minnesota attorneys to practice while impaired or unlawfully conflicted.

And so, in an unrelated but significant litigant, officer-of-the-court, judicial matter, Fuller first disclosed and was then sanctioned for accurately reporting the following:

That a state court judge made an award of $12,000 in attorney's fees and of the family homestead to a sexual litigant and a probated attorney, Wylie, acting as a sexual officer of the court who was reportedly the Judge's college chum. The awards were made when the attorney, Wylie, was knowingly sexual with the litigant who was also the wife of the sexual attorney's former client in a then pending dissolution matter. The MN OLPR failed to sanction the previously probated and then sexual attorney/officer of the court, stating instead that the sex was consensual. The Minnesota Judicial Standards Board stated that the Judge's actions [even though often sanctioned] were understandable since he was {sic} "adopted." Fuller who alone, it seems, saw the clear and present danger to our Courts and to our system of justice was fined $5,000 for speaking up and was then admonished by the Minnesota OLPR.

The offending Minnesota licensed attorneys, both the sexual and Hanson's, were protected by the MN OLPR and remain licensed.

Fuller was suspended from the practice of law in Minnesota for following the United States Code and this Court's decisions and Eighth Circuit Court of Appeals and other Bankruptcy Court reported decisions.

The questions presented here are whether the United States Code and the growing body of Courts of Appeal and other federal reported bankruptcy cases describing the higher and different duties of a federal bankruptcy attorney govern and control the actions of a federal officer of the federal courts to investigate and report federal bankruptcy fraud and crimes and thefts from the United States Treasury.

C. Proceedings Below

To assure eventual "federal judicial oversight," Don Fuller immediately began to present first to the County Panel, then to the MN OLPR investigator who then served also as the same MN OLPR civil prosecutor, then to the Lawyer's Board Panel, then to the assigned trial referee and then to the Minnesota Supreme Court the higher and different duties of the federal attorney appearing in the United States Bankruptcy Court.

Fuller completely advised all levels of investigation and the Lawyer's Board prosecutor of this Court's decisions in *McCulloch v. Maryland* and *Commodity Futures,* as well as the Eighth Circuit cases of Dolan and Handeen and also of the federal requirements under 18 USC 4, 152, and 1962.

All levels of state review, including the Minnesota Supreme Court panel of Justices simply ignored the federal law and the Decisions of the United States Supreme Court and the United States Courts of Appeal.

At all stages of review, due process was lacking as Fuller's first attorney admitted he was impaired while representing Fuller, one of the two successor pair of Fuller's attorneys was impaired and the final attorney who was released by Fuller stated that Fuller's problem was that Fuller was "too honest to be an attorney."

Fuller unknowingly had proceeded without effective assistance of counsel. Fuller maintains that the Minnesota public, less able to discern "ineffective assistance of counsel," but with Constitutional needs—including life and liberty—for protection in matters of concern for this Court

far greater than Fuller's, is at much greater risk due to Minnesota's significant impaired and conflicted attorneys.

When Fuller demonstrated both that he had the duty to withdraw from the RICO conduct of Hanson/Imprints and that Fuller had protected his "by operation of law" DIP clients, then Fuller was sent to see a psychologist. Both MN OLPR attorney Burns and Fuller's then retained counsel withheld from the psychologist Fuller's records establishing both a lifetime of well-being and service with distinction as a United States Marine. They thereby secured a slanted opinion which was inconsistent with the standardized MMPI which Fuller obtained through testing to confirm that Fuller was normal in all respects.

In 1990, Fuller had reportedly posted the highest pre-bar scores on the Minnesota Bar preparatory courses in 17 years. The Minnesota Supreme Court licensing Board attorneys even then accused Fuller of cheating instead of simply accepting that Fuller, a Marine, could be intelligent and also quite focused and well balanced.

D. The Minnesota Supreme Court Ignored Federal Law

At all stages of the MN OLPR investigation, Fuller raised the issue of the supremacy of the federal law and the higher and different duties owed by a Chapter 11 DIP attorney.

At all stages of the investigation the MN OLPR attorney Burns, while supervised by Cleary, ignored both the federal law and the higher and different duties Fuller owed to the federal court and to the bankruptcy estate.

During the investigation and beginning on March 13, 1998, MN OLPR attorney Burns began to threaten, harass, and coerce and then retaliate against Fuller who Burns knew to be an FBI informant.

Fuller even advised the MN OLPR that Hanson would file additional "serial" bankruptcies and also steal again from the Court supervised bankruptcy estate and from the IRS and Minnesota Department of Revenue. Hanson, the convicted federal felon did then file two additional bankruptcies, one personal and one business. Creditors reported that up to $950,000 in bankruptcy assets disappeared so that Hanson could continue gambling with creditor and federal and state tax funds.

An additional $55,000 of IRS employee withheld trust taxes were boldly stolen by Hanson while he was under supervision of the United States District Court and the United States Probation Office. Hanson's retained attorneys and the MN OLPR personnel assisted the convicted federal felon and by omission, if not commission, thereby misled the United States District Court Judge as they also interfered with Fuller and thereby obstructed federal justice.

In order to better explain the damage that Hanson and the MN OLPR attorneys have caused to creditors and tax authorities, the following list of Hanson engineered bankruptcy filings is produced.

Hanson personal Chpt 7
Hanson Decorating
United Custom Homes
United Interiors Chpt 11
United Interiors Chpt 7
Hanson personal Chpt 7

JDE Inc/Imprints Chpt 11
JDE Inc/Imprints Chpt 7
US Workforce/Imprints Chpt 11
US Workforce/Imprints Chpt 7
Cantainer Corporation Chpt 11
Hanson personal Chpt 13
Hanson personal Chpt 7
Safety Line Inc/Imprint Technologies Inc. Chpt 11
Imprints LLC/Imprints Chpt 11

The Minnesota Supreme Court erroneously decided this matter by ignoring United States Supreme Court decisions, by ignoring United States Courts of Appeal decisions, and by ignoring the United States Criminal and Bankruptcy Codes.

REASONS FOR GRANTING THE PETITION

A. Federal Courts Must Always be Protected Against Unlawful Obstruction of Justice By any State's Attorneys

The Minnesota Supreme Court, in deciding to ignore the United States Code and decisions of both the United States Courts of Appeal and this Court which govern the actions of federal attorneys appearing in the United States Bankruptcy Court, has directly challenged the authority of the United States Government and both its Judicial and Executive Branches.

This Court has long ago firmly established the principles of federal judicial review through *Marbury v. Madison; McCulloch v. Maryland; Fletcher v. Peck,* 10 U.S. (6 Cranch) 87 (1810); *Martin v. Hunter's Lessee,* 14 U.S. (1 Wheat) 304

(1816); and *Cohens v. Commonwealth of Virginia,* 19 U.S. (6 Wheat) 1821), when:

1. State action substantially impairs the Constitutional rights of individuals or the powers of the federal government.

2. Any state's law attempts to supersede and be superior to provisions of the United States Code in violation of the United States Constitution Article VI, Clause 2.

3. This Court must act to assure that the United States Constitution remains apart from and superior to any concept of state sovereignty or the unlawful exercise of state power to subvert the federal government and its Sacred Courts.

B. The Minnesota Supreme Court Failed to Respect the Supremacy of the United States Bankruptcy Court and the decision in *McCulloch v. Maryland.*

Congress has created the United States Bankruptcy Court and established rules for conduct with different and higher duties for DIP Chapter 11 attorneys.

Reported federal court decisions confirm the higher and different duties of a federal DIP attorney. As well stated in *In Re Rivers,* "when the interests of the Chapter 11 DIP conflict with those of the bankruptcy estate, it is the estate and the court to which the attorney owes his highest allegiance." *See, In Re Rivers,* 167 B. R. 288 (Bankr. N. D. Ga. 1994).

The unique circumstances which surround insolvency, as defined by Congress in the United States Code, in the Federal Courts through the filing of a Chapter 11 DIP case, place the DIP attorney in the unusual position of owing a higher duty to the estate, to the court, and to the trustee and creditors, than is owed to the attorney's retained client, i.e., the Chapter 11 DIP.

The Court in *In re Harp*, 166 B. R. 740 (Bankr. N. D. Ala 1993) established some of the better guidelines for Chapter 11 attorneys to follow as it held that:

A Chapter 11 DIP has fiduciary duties to the Court and to its Chapter 11 creditors.

A Chapter 11 DIP is an odd legal entity as it acts both for itself and for creditors and others parties in interests, i.e., the tax authorities.

A Chapter 11 DIP has fiduciary responsibilities to unsecured creditors and other parties in interest requiring the DIP to act in the capacity of a bankruptcy trustee.

Lawyers representing DIPS are also charged with special responsibilities of insuring that when the interest of the estate conflicts with the interest of the individual who signs the DIP attorney's checks, the interest of the estate must prevail.

The Court *In re Harp* citing to the United States Supreme Court case of *Commodity Futures Trading Commission v. Weintraub*, 105 S. Ct. 1986 1985) went on to state that:

The attorney for the DIP is also a fiduciary for the bankruptcy estate. The unique circumstances which surround insolvency and the filing of a Chapter 11 case place the attorney for the DIP in the unusual position of sometimes owing a higher duty to the estate and the bankruptcy court than to the DIP client.

In re Whitney Place Partners, 147 B.R. 619, 620-621 (Bankr. N.D. Ga (1993) the Court noted that the unique circumstances which surround the filing of the Chapter 11 case place the attorney for the DIP:

"....in [the] unusual position of owing a higher duty to the estate and bankruptcy court than to the DIP. The counsel for the Chapter 11 DIP cannot close their eyes when the DIP's principals are not acting in the best interests of the bankruptcy estate and its creditors."[1]

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1. *See, Commodity Futures Trading Commission v Weintraub* case, the attorney for the DIP is also a fiduciary to the bankruptcy estate and the debtor's attorney has a fiduciary duty to act not just in the best interests of the DIP but rather to act in the best interests of the entire estate, including the creditors. *In re Doors and More, Inc.* 126 B.R. 43, 44 (Bankr E.D. Mich 1991); *In re James Contracting Group, Inc.* 120 B. R. 868, 873-874 (Bankr. N. D. Ohio 1990); *In re Bonneville Pacific Corp.,* 196 BR 868 at 885 (C.D. UT 1996); *In re Granite Sheet Metal Works, Inc.* 159 B. R. 840, 848 (Bankr. S. D. Ill 1990); *In re Blue Top Family Restaurant, Inc.* 110 B. R. 777 (Bankr. W. D. Pa. 1990); *In re El San Juan Hotel Corp,* 149 B.R. 263, 272 (D. P.R. 1992); *In re Chicago Art Glass, Inc.* 155 B.R. 180, 185 (Bankr N.D. Ill. 1993); *In re Prudent Holding Corp* 153 B.R. 629, 631 (Bankr E.D. N.Y. 1993); *In re Consolidated Bankshares, Inc.* 785 F. 2d.

1249 (5th Cir. 1986) *In re Bohack Corp.*, 607 F. 2d. 258 (2nd Cir. 1979); *Woods v. City Nat'l Bank & Trust Co.*, 312 U. S. 262, 61 S. Ct. 493 (1941); *In re Grabill Corp.* 113 B.R. 966, 970 (Bankr N.D. Ill 1990) aff'd 135 B.R., 835 (N.D. Ill (1991); *In re D. H. Overmeyer Telecasting, Co.*, 23 B.R. 823 (Bank. N. D. Ohio 1982) aff'd 740 F. 2d 31 (6th Cir. 1984).

The DIP, as well as counsel, owe undivided loyalty to the bankruptcy estate. The DIP is a fiduciary of the estate and performs its duties for the benefit of creditors.[2]

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2. See, *In re Coastal Equities*, 39 BR. 304 (S.D. Cal 1984); *In re Hughes*, 704 F. 2d 820 (5th Cir 1983) *In re Modern Office Supply, Inc.* 28 BR 943, 10 B.C.D. 529 (Bankr. W. Ok. 1983); *In re Kendavis Industries International Inc.* 91 B.R. 742 (Bank. N. D. Tex 1982); *In re Roger J. Au & Son, Inc.*, 71 B.R. 238 (Bank. N. D. Ohio 1986); *In re Roberts*, 46 B.R. 815 (Bankr. D. Utah 1985); *In re Freedom Solar Center, Inc.* 776 F. 2d 14, (1st Cir, 1985; *In re McKinney Ranch Associates*, 62 B.R. 249 (Bankr. C.D. Cal 1986); *In re Hoffman*, 53 B.R. 564 (Bankr. W.D. Ark 1985); *In re Watson Seafood & Poultry Co.*, 40 B.R. 436 (Bankr. E.D. NC 1984); *In re Chou-Chen Chemicals, Inc.*, 31 B.R. 842 (Bankr. W.D. Ky 1983); *In re Sambo's Restaurant*, 20 B.R. 295 (Bankr. C.D. Cal 1982); *U.S. v. Dolan* 120 F. 3d 856 (8th Cir. 1995); *Handeen v. LeMaire*, 112 F. 3d. 1339 (8th Cir. 1997); *U.S. V. Anderson* 68 F. 3d 1050 (8th Cir. 1996); *U.S. v. Rosen*, 130 F. 3d 5 (1st Cir. 1997) and *U. S. v. Reudlinger*, 1997 WL 807917 (D. Kan. Dec 09, 1997).

C. The Minnesota Supreme Court Interpretation of the MRPC conflicts with the actual attorney-client relationship of a DIP Chapter 11 attorney and is inconsistent with the Eighth Circuit Court of Appeals Decisions in U. S. V. Dolan and Handeen v. LeMaire and the growing body of federal cases substantiating the higher and different duties of a federal DIP attorney.

The Bankruptcy Courts have placed an increasing burden on the DIP attorney and the duties are ones which, if ignored, may result in criminal prosecution, when the Debtor's attorney commits "just one overt act" in furtherance of the bankruptcy fraud and resulting civil treble damages for RICO violations.

The 8th Circuit Court of Appeals in *Handeen v. LeMaire* made it quite clear that attorneys may be liable for RICO activities of their clients by stating that:

While an attorney who provides ordinary professional assistance does not "participate" in the conduct of a RICO enterprise, this is not to say that an attorney who associates with a RICO enterprise can never be liable under RICO; [an] attorney's license is not [an] invitation to engage in racketeering, and the lawyer no less than anyone else is bound by generally applicable legislative enactments such as the RICO act. 18 USC 1962.

Neither the MRPC nor the Minnesota Supreme Court may abrogate a federal DIP attorney's higher and different duties which are, by operation of federal law, owed to the bankruptcy estate, to the bankruptcy court, and are also owed to the creditors and to the federal and state tax authorities.

To the extent that the MRPC fail to incorporate the United States Code and the federal court decisions concerning the higher and different duties of a federal DIP bankruptcy attorney, the MRPC cannot be used to sanction a federal attorney who has performed the higher and different federal duties.

D. The Decision of the Minnesota Supreme Court is Erroneous

No state court may require an attorney to violate the United States Criminal Code nor can it protect Lawyer's Board attorneys who obstruct federal justice and facilitate or assist any thief to steal "post-petition" bankruptcy assets and funds from the United States Treasury.

The decision of the Minnesota Supreme Court is clearly erroneous as it sanctions Fuller for:

1. Making required reports of federal bankruptcy and racketeering crimes.

2. Reporting obstruction of federal justice by Lawyer's Board personnel.

3. Protecting both the bankruptcy estate and Fuller's retained client, Jordan.

4. Protecting the United States Treasury from thefts by Hanson, who was represented by Hoilland, not Fuller.

Once a United States Bankruptcy Court has accepted a Petition for creation of a DIP a unique status is created between the DIP attorney and both the Bankruptcy Court and creditors and the state and federal tax authorities. Not even the MRPC, or MN OLPR attorneys, may degrade the higher and different duties owed by the DIP attorney to the bankruptcy estate, to the court, and to the creditors and the tax authorities.

The decision of the Minnesota Supreme Court which artificially created an attorney-client relationship with Hanson, who was personally represented by Hoilland, is erroneous.

The Minnesota Supreme Court decision is also erroneous as it required Fuller, a federal DIP attorney, to follow the state MRPC for withdrawal and thereby risk Dolan and Handeen consequences.

Fuller fulfilled his duties to the Bankruptcy Court and to the FBI and in the process assured that he could not be charged criminally like Dolan or with Racketeering as evidenced in *Handeen v. Lemaire*.

The decision of the Minnesota Supreme Court is also erroneous as it sanctioned Fuller for notifying the Attorney General of the United States about bankruptcy fraud and criminal misconduct by Hanson, while represented by attorney Hoilland, which notification resulted in Hanson's federal felony conviction for stealing from Fuller's client Jordan and "post-petition" from the United States Bankruptcy estate.

The Minnesota Supreme Court decision erroneously permits MN OLPR attorneys Cleary/Burns to obstruct federal justice in violation of 18 USC 1507, 1512, and 1513.

The decision wrongfully curtails an attorney's right to freedom of speech in violation of the First Amendment to the United States Constitution, it appears, both due to the Court's dislike of the content of the speech and the truthful reports concerning their own OLPR attorneys' unlawful misconduct. *Garrison v. Louisiana*, 379 U. S. 64, (1964); *Gentile v. State Bar of Nevada*, 501 U. S. 1030 (1991); *Standing Committee on Discipline v. Yagman*, 55 F. 3d 1430 (9th Cir. 1995) and *In re Wild Horse Enterprises, Inc.*, 136 BR 830 (C. D. CA 1991)

E. The Questions Presented Are Important to the Preservation of America's State and Federal Courts and the Assurance of Equal Access to Justice is a Important National Defense Issue

History shows us that from the Fall of the Roman Empire to the Bolshevik Revolution that nation states fail when their courts cannot—or are perceived by their citizens unable to—assure their citizens equal access to—and the delivery of—justice.

Federalist Paper 51 advises that ..."justice is the end of government."

In order to restore the Public's trust in our Sacred Courts and to assure that all citizens of America regain equal access to justice, America's "hired gun" attorneys must henceforth be better identified, rather than enabled by state lawyer's licensing boards, and regulated more uniformly, perhaps even by federal oversight, so that attorneys approach the

Courts and litigants with integrity and so that judges may make "better informed" decisions based on actions and pleadings of honest attorneys.

Attorneys, licensed too long by "just state attorney licensing agencies," are the trusted gatekeepers to equal access to federal justice. They must always be above reproach and they must better fulfill, with integrity, their higher and different duties owed to our respective state and federal courts. *Hoppe v. Klapperich,* 22 N. W. 2d 780 (MN S Ct 1947).

No state should hereafter be permitted to interfere with a federal attorney's higher and different duties to the Courts of the United States of America nor should any state be permitted to suspend a federal attorney who has faithfully fulfilled those federal duties.

No state should hereafter be permitted to obstruct federal justice or interfere with a federal attorney's access to, and the higher duties in, the Courts of the United States of America.

No state should hereafter be permitted to assist any thief to steal from the treasuries of the United States of America or of any State.

No state should hereafter be permitted to silence a federal attorney, especially like in Fuller who was threatened by Hanson, who is cooperating with the FBI and reporting "post-petition" thefts by Hanson from the court supervised bankruptcy estate and also from his lawfully retained client, Jordan.

F. The Minnesota Supreme Court ignored its own Constitution, and denied Fuller due process, by permitting the MN OLPR to damage the character of Fuller in violation of Article 1, Section 8 of the Minnesota Constitution.

Under Article 1, Section 8 of the Minnesota Constitution, no state employee may act to destroy the character of any Minnesota citizen while the state employee is engaged in any unlawful action. It has long been clear that the MN OLPR acted to deprive Fuller of his lifelong reputation as a federal attorney of great integrity and character by denying Fuller due process and the equal protection of the laws in violation of the 5th and 14th Amendments to the United States Constitution.

No state procedure can assure due process when the Lawyer's Board ignores the higher duties an attorney has to the Courts and while there is no Court's Advocate in the Lawyer's Board proceedings to assure that the Court's higher interests are protected against unlawful actions by a conflicted investigator who:

1. First, threatened Fuller, an FBI informant and federal officer of the federal courts, in violation of 18 USC 1507, 1512, and 1513.

2. Then retaliated, unlawfully, when Fuller made reports required to substantiate the unlawful actions of Patrick Burns.

3. Then ordered Fuller to go through the Lawyer's Board retained psychologists, in part, to cover up the unlawful actions of OLPR personnel.

Without the Court's Advocate in the Lawyer's Board proceedings, the investigator/prosecutor is free to frolic with and assist the criminals and harm honest attorneys. To presently assure fundamental due process and also the future stability of the Courts there must be a Court's Advocate assigned to each Lawyer's Board proceeding.

G. The MRPC are an unconstitutional interference with a Chapter 11 Debtor in Possession attorneys freedom of association with, and duties to the, by operation of law clients.

The MRPC are unconstitutional because they empower the Minnesota Lawyer's Board to interfere with a federal attorney's highest duties to the court and with the attorney's freedom of association necessary to fulfill the highly personal duties and responsibilities required by federal law as owing to the "by operation of law" Debtor in Possession law clients. Within the concept of ordered liberty, Fuller also has fundamental rights of free access to the courts and to freedom of assembly guaranteed by the First and Ninth Amendment. *Moore v. City of East Cleveland,* 431 U. S. 494, 97 S. Ct. 1932 (1977).

It is clear that Fuller's duties to the by operation of law Debtor in Possession clients involves the right, the duty, and the privilege of free and open communication protected by the First Amendment. The MRPC cannot prohibit a federal Debtor in Possession attorney from communicating with his actual or by operation of federal law clients. It is also clear that when Hanson threatened Fuller and when Hanson stole from Fuller's clients, there were no remaining secrets or confidences to be claimed by Hanson, who was then represented by attorney Hoilland. It is clear that Fuller was at all times acting for the advancement of the higher goals,

as established by the United States Supreme Court in Commodity Futures etc. and the Minnesota Supreme Court's decision in *Hoppe v. Klapperich*. Those higher federal and state duties are clearly protected social and judicial goals required for the protection of ordered liberty and cannot be regulated by state rules of professional conduct which clearly prohibit and regulate free speech and association guaranteed by the First Amendment. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 102 S. Ct. 3409 (1982).

Given both the criminal sanctions and civil treble damages RICO exposure which a Debtor in Possession attorney faces in the 8th Circuit under the *U.S. v. Dolan* and the *Handeen v. LeMaire* decisions, for committing one overt step in furtherance of the Hanson type thefts from the court supervised bankruptcy estate which Fuller had a clear federal duty to protect, the MRPC cannot be used as a silencer on Fuller's right to freely disassociate himself from Hanson who was convicted by a federal court of stealing from both Fuller's client's 401k funds and from the "post-petition" court supervised bankruptcy estate Fuller was duty sworn to protect.

H. The MRPC are unconstitutional because there is no 10th Amendment reservation to the states to alter the higher and different duties of a federal bankruptcy attorney or to permit the state's irregular application of the United States Bankruptcy Code.

The MRPC, Rule 8.5, purport to incorporate by reference the United States Code; however it is clear that neither the Minnesota Supreme Court nor the attorneys for the Minnesota Lawyer's Board have any familiarity with federal law.

The Minnesota Supreme Court failed to consider the substantial and growing body of federal law.

Petitioner asserts that under *Fletcher v. Peck,* and resulting federal case law and the United States Code, the power to license and regulate federal bankruptcy attorneys remains in the United States Government and cannot be abrogated to the respective states.

Both Article III, Sec. 1, and Article I, Sec. 8, cl. 10, clearly grant to Congress the power to create federal courts. It should be equally clear that the plenary power to first license and then regulate federal bankruptcy attorneys resides in the United States Congress and the federal courts, not in the diverse states' lawyer's boards.

It is clear under the Commerce Clause that not even the Minnesota Supreme Court may enact debtor relief laws. However, by first adopting and then interpreting its own lawyer's MRPC the Minnesota Supreme Court has enacted laws and rules which unconstitutionally favor Minnesota debtors while harming both the United States Courts and the United States Treasury.

Congress cannot have intended that its Bankruptcy Code would be undermined by "state hired gun" attorneys abrogating their higher and different federal duties. The drafters of the Constitution and the United States Congress both clearly understood that economic growth and stability

of the United States of America depend on uniform Federal Bankruptcy laws which cannot be abrogated by any State legislature or State Supreme Court. The Constitution therefore reserves in Congress the power to establish uniform bankruptcy laws and to restrict the power of the states to annul or void such valid credit arrangements. U.S. Const. art I, Sec. 8, cl 4.

The Contract Clause may be interpreted to reign in reckless state legislatures or State Supreme Courts who, by their laws or rules, interfere with both the United States Code and federal court decisions upholding the supremacy of federal debtor relief laws.

The Minnesota Supreme Court cannot impermissibly destroy the special trust and confidence in the federal bankruptcy courts and federal attorneys which the Congress has envisioned as necessary to assure the uniformity of implementation of the United States Bankruptcy Code. *Sturges v. Crowninshield,* 17 U.S. (4 Wheat) 122, 4 L. Ed. 529 (1849); *Ogden v. Saunders,* 25 U.S. (12 Wheat) 213, 6 L. Ed. 606 (1827).

POLICY GROUNDS FOR REVIEW

The federal system must be protected against state attorneys who assist or conceal thefts from the federal treasury. The federal courts must be protected against state licensed attorneys who facilitate bankruptcy fraud and thefts from the federal court supervised bankruptcy estate. There must be better national definition of both the term "serial bankrupt" and of the badges of "bad faith" filings and bankruptcy fraud as the Court better informs the public, educates present and future law students, and leads

practicing attorneys to understand the higher and different important duties of a federal bankruptcy attorney.

CONCLUSION

For the reasons stated herein, the petition for writ of certiorari should be granted.

No state, or any of its employees or attorneys, should ever be able to obstruct federal justice or inhibit the actions of a federal attorney appearing in a federal court who is charged by operation of federal law as a officer of the federal court to protect the court supervised bankruptcy estate.

June 6, 2001 Respectfully Submitted,

Don Fuller, Petitioner
100 S. Fifth Street Ste. 250
Minneapolis, MN 55402
Tel. 612.332.0938

No. _____

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA

October Term, 2000

In Re Donald Bedelle Fuller, Petitioner

On Petition for a Writ of
Certiorari to the
Minnesota Supreme Court

PETITION FOR A WRIT OF CERTIORARI

APPENDIX 1

STATE OF MINNESOTA

IN SUPREME COURT

CX-99-2061

Supreme Court

Per Curiam
Took no part, Blatz, C. J. and Gilbert J.

In Re Petition for Disciplinary Action
Against Donald Bedelle Fuller, an Attorney
At Law of the State of Minnesota

Filed: January 25, 2001
Office of Appellate Courts

SYLLABUS

Attorney's improper withdrawal from representation of client, improper disclosure of client confidences, failure to disclose source of attorney fees in violation of the rules of the tribunal, and submission of false evidence on a disciplinary proceeding, which conduct occurred in the context of a possible unacknowledged psychological problem, warrant indefinite suspension from the practice of law.

Before reinstatement, attorney must provide adequate psychological or other medical evidence establishing that he has no psychological problem that would prevent him from practicing law competently, diligently, and within the rules of conduct for attorneys at law.

Indefinite suspension from the practice of law with no minimum term.

Heard, considered, and decided by the court en banc.

OPINION

PER CURIAM.

In 1999, the Director of the Office of Lawyers Professional Responsibility requested that the Lawyers Professional Responsibility Board find that probable cause existed for either public discipline or a transfer to disability in active status for attorney Donald Fuller. A Board panel found probable cause for public discipline, but declined to find probable cause for the transfer to disability inactive status. A petition for disciplinary action was then filed and we referred the matter to a referee for a hearing. The referee recommended that Fuller be suspended indefinitely from the practice of law for a minimum of one year, that he complete a psychological evaluation, and that he follow any recommendations of the evaluation. Fuller challenges the referee's recommendations. We indefinitely suspend Fuller from the practice of law with no minimum term and place conditions on his reinstatement.

Donald Fuller has had a long legal career marked by many achievements. In 1971, Fuller graduated from the University of Illinois Law School and was admitted to the practice of law in Illinois. He entered the Marine Corps in 1972 and served on active duty until June 1976. In 1974, Fuller was certified as a military judge, which certification is still current. From 1976 through 1983, Fuller practiced law in Illinois and remained a reserve officer with the Marines. Fuller then re-entered the Marines on active duty until he was discharged in 1986. He remained in the Marine Reserves until he retired in 1994 as a full colonel. Fuller moved to Minnesota in 1987. He passed the Minnesota bar exam and was admitted to the practice of law in Minnesota in 1990. In addition to his Minnesota attorney license, Fuller

is licensed to practice law in the state of Illinois, the Military Court of Appeals, and the United States District Courts for the Districts of Minnesota and Eastern Illinois.

Fuller's prior disciplinary history consists of two admonitions. On April 12, 1993, he was admonished for violating Minn. R. Prof. Conduct 1.9 for filing a suit for a current client against a former client without obtaining the former client's consent. On May 20, 1996, he was admonished for failing to pay bad faith attorney fees arising from a March 1995 district court order. In the memorandum issued with the admonition, the Office of Lawyers Professional Responsibility (OLPR) noted that Fuller had conducted a voluminous and irritating letter-writing campaign, which the OLPR stated illustrated poor judgment, but did not cross the line of proper conduct. Fuller disputes this second admonition, asserting that he had signed a note to pay the fees.

Fuller's current disciplinary problems stem from his representation of Brett Hanson, Hanson's businesses, and Hanson's business associates. Fuller began representing Hanson and his businesses in bankruptcy and tax proceedings in 1990. In September 1995, Fuller prepared a Chapter 11 bankruptcy filing for one of Hanson's businesses, Imprint Technologies, Inc. [1] Fuller maintains that when he agreed to represent Imprint and Hanson in the 1995 Chapter 11 filing, he conditioned his representation on Hanson receiving chemical dependency treatment.

Hanson paid Fuller weekly cash payments as compensation for his work on the Imprint bankruptcy. Fuller testified that before the establishment of this payment method, he learned that Hanson had paid Imprint's former bankruptcy attorney cash and that the payments were not reported to or

approved by the bankruptcy court. Fuller asserts that when he learned of this arrangement, he reported it to the supervising attorney in the U.S. Trustees' Office and the OLPR, but neither of these entities took action or informed Fuller that the arrangement was illegal. The record is silent as to whether the Trustees' Office or the OLPR received such a report. When Hanson's filing check was not honored and Hanson threatened to bring a disciplinary action against Fuller, Fuller asserts that he agreed to accept $290 per week in cash from Hanson and not disclose the payments to the bankruptcy court. Hanson, however, testified that the cash payments were made at Fuller's request.

In February 1996, at Hanson's request, Fuller began representing Pamela Jordan in a Chapter 13 bankruptcy proceeding. Jordan was an employee of Imprint and a "partner" of J.D., Inc., Imprint's predecessor company. The Chapter 13 bankruptcy was filed to protect Jordan from levies against her wages for unpaid withholding taxes due from J.D., Inc. during Jordan's tenure as a "partner" of the corporation.

On May 2, 1996, the bankruptcy court issued an order confirming Imprint's reorganization plan and requiring Imprint to file objections to proofs of claim within 30 days of the order date or of the date the claim was filed. In another order issued the same day, the court ordered Imprint to report within 10 days on payments to be made under the reorganization plan.

At this same time in 1996, Fuller was representing Imprint in an unlawful detainer action. Fuller had been negotiating with Imprint's landlords for a number of months in an attempt to obtain a new lease for Imprint and to pay the

debt owed for past rent. Despite these efforts, a district court hearing on the unlawful detainer action was scheduled for Tuesday, June 4, 1996. Fuller asserts that 6 days before this hearing, during a conversation with Imprint's CPA, he learned that Hanson planned to take "up to the $40,000's" out of Imprint, despite the bankruptcy proceedings. Two days later, on May 31, Jordan and another employee asked Fuller about receiving their payments from Imprint's 401(k) plan. Fuller asserts that even though he knew some of Imprint's 401(k) funds were missing, prior to this date he believed that all the money in the 401(k) plan was Hanson's.

On Saturday, June 1, Fuller received a fax from Hanson essentially stating that Imprint's landlords should "shove it." On the next day, Sunday, June 2, Fuller wrote a letter to Hanson about the lease in which, despite the tone of Hanson's fax, he "gave Imprint the benefit of the doubt." In the letter, Fuller blamed the delay in obtaining a new lease on the landlords and their attorney. Fuller testified that he then met with Imprint's CPA and Hanson on Monday, June 3, and learned that the company was moving and Imprint was not going to pay the landlords the money owed as rent. That same day, Fuller also confronted Hanson about the missing 401(k) funds. [2]

On the evening of June 3, after numerous telephone conversations with Hanson, Fuller withdrew from representing Imprint on both the bankruptcy and the unlawful detainer matters. In a letter to Hanson dated June 3, Fuller stated that the reason for the withdrawal was Hanson's refusal to seek chemical dependency treatment. Fuller did not attend the June 4 unlawful detainer hearing, nor did he file a motion to withdraw from the bankruptcy action. Fuller testified that he did not file any of the required objections to proofs of claims in the bankruptcy

proceedings, some of which were due on June 3, because Hanson ordered and threatened him not to do anything. Fuller also testified that he did not take certain other actions because he was afraid of Hanson. At Fuller's disciplinary hearing, neither Fuller nor the OLPR attorney questioned Hanson about his involvement in or his reaction to Fuller's withdrawal as his and Imprint's attorney.

On June 4, Hanson attended the unlawful detainer hearing. Hanson did not inform the court or Imprint's landlords about Fuller's withdrawal as the attorney of record, but instead explained Fuller's absence by telling the court that Fuller had been in a car accident. Following the unlawful detainer hearing, Hanson and the landlords signed a new lease agreement and a past-due payment schedule. Imprint did not comply with either the new lease terms or the payment schedule. At his disciplinary hearing, Fuller attempted to use Imprint's noncompliance with the new agreement as evidence of the necessity for his withdrawal. He attempted to do this by offering testimony of the landlords, but the referee did not allow the landlords to answer questions on this topic.

On June 6 and 11, Fuller, by letter, notified the attorney for the committee of unsecured creditors and the attorney for the landlords that he had withdrawn from representing Imprint and Hanson due to Hanson's failure to receive chemical dependency treatment and Hanson's propensity for writing worthless checks. On June 11, Hanson wrote a letter to Fuller, reminding Fuller that Hanson's treatment plans were confidential.

Fuller eventually wrote letters about Hanson to over 25 individuals and government agencies, such as Vice President Al Gore, Attorney General Janet Reno, the FBI, the

IRS, Hanson's former attorney, the Minnesota Attorney General's office, the OLPR, judges involved with Imprint litigation, and creditors of Imprint. In these letters, Fuller accused Hanson of chemical dependency, fraud, intimidation, and murder. In a letter to federal and state tax authorities, Fuller alleged that Hanson had underreported the sale price of some Imprint assets, despite the fact that Fuller had drafted the sale documents and knew the actual sale price, which price was subsequently confirmed by the buyer. Fuller asserts that Hanson told him the price was higher than reported in the documents. Fuller sent letters to some of Hanson's creditors disclosing Hanson's prior bankruptcies and his conviction for converting Imprint's 401(k) funds. Fuller also alleged in his letters that Hanson had threatened Fuller and had converted funds to his personal use. Hanson testified that at least one of Imprint's creditors received such a letter and contacted Hanson about it. In September 1999, Fuller filed a complaint with the bankruptcy court, on behalf of Jordan and himself, objecting to the discharge of Hanson's debts in his personal bankruptcy. This complaint was dismissed because it was not timely filed.

Hanson filed a disciplinary complaint against Fuller with the OLPR and on September 5, 1997, Fuller appeared before the Court District Ethics Committee of the Hennepin County Bar Association to respond to Hanson's allegations. The Committee found the conduct of both Fuller and Hanson, a nonattorney, to be troubling and recommended a further investigation of Fuller by the Lawyers Professional Responsibility Board (LPRB). [3]

In December 1997, the OLPR requested copies of all letters Fuller had sent regarding Hanson and Imprint and a list of all persons Fuller had contacted. In a reply letter, Fuller

listed many of the persons he had contacted, but stated that he did not keep any letters or files relating to Hanson. In August 1998, the OLPR requested additional information from Fuller about his reasons for withdrawing as counsel from Imprint. In response to this request, Fuller sent the OLPR copies of letters dated September 1996 and July 1997 in which he alleged that Hanson made death threats, committed fraud, and abused alcohol. At Fuller's disciplinary hearing, the addressees of these letters were questioned and neither of them could recall receiving the letters nor could they find the letters in their files.

In February and March 1999, at the suggestion of the OLPR, Fuller agreed to submit to evaluations to be conducted by a psychologist and a psychiatrist. The psychologist who tested Fuller noted in his report that Fuller expressed "pervasive paranoid traits" and that Fuller based his explanations of his conduct on his "ethics, morality, and truth." The psychiatrist reviewed the psychologist's report in addition to Fuller's civilian and military medical records and met with Fuller for four hours. The psychiatrist concluded that Fuller suffered from a Paranoid Personality Disorder. The psychiatrist clarified that this disorder is not one in which the individual is delusional, but instead the disorder can lead to the types of difficulties Fuller has had, such as problems in interacting with clients or interpreting professional regulations. The psychiatrist was not certain that Fuller's disability would warrant placement on disability status, but the psychiatrist did state that Fuller would benefit from professional help.

In May 1999, the Director of the OLPR requested that a panel of the LPRB find probable cause existed for public discipline or a transfer to disability inactive status. On November 4, 1999, the LPRB panel found probable cause for

public discipline, but declined to find probable cause for Fuller's transfer to disability inactive status. On December 2, 1999, the OLPR filed a petition for disciplinary action. According to the OLPR, the petition, which contains two counts, was based on the complaint filed by Hanson. Count one relates to Fuller's representation of Imprint and Hanson and alleges improper withdrawal from representation, improper disclosure of client confidences, and failure to disclose the source of Imprint attorney fees in violation of Minn. R. Prof. Conduct 1.16(c), 1.16(d), 1.5(a), 1.6, 3.(a), 3.4(c), 4.1, 4.4, 8.4(c), and 8.4(d). Count two alleges that Fuller submitted false evidence in a disciplinary investigation in violation of Minn. R. Prof. Conduct 3.3(a)(4), 3.4(b), 8.1(a), and 8.4(c).

On January 10, 2000, we referred the matter to a referee to make findings and conclusions and to recommend a disposition. A hearing on the petition was held before the referee in April 2000. The referee issued his findings, conclusions, and recommendations on May 23, 2000, and recommended that we indefinitely suspend Fuller with a 1-year minimum term, that we require Fuller to successfully complete a mental health evaluation, and that he follow all recommendations of the evaluation. Fuller timely ordered a transcript of the hearing and challenges the findings, conclusions, and recommendations of the referee.

I.

Fuller ordered a transcript of the referee's hearing under Rule 14(e) of the Rules on Lawyers Professional Responsibility (RLPR) and therefore the findings and conclusions of the referee are not conclusive. *See* Rule 14(e), RLPR. Nevertheless, we will overturn the findings and conclusions of a referee in a disciplinary proceeding only if

they are clearly erroneous. *See In re Reiter*, 567 N.W.2d 699, 701 (Minn. 1997). The referee's findings on disputed facts are given great deference. *See In re Wyant*, 533 N.W.2d 397, 400 (Minn. 1995). In this appeal, Fuller does not directly dispute most of the factual findings of the referee, but instead argues that his actions were necessary in order for him to fulfill his higher duty to the court and his other clients.

The referee found three separate categories of violations of the Rules of Professional Conduct in Fuller's handling of his representation of Hanson and Imprint: improper withdrawal from representation, misrepresentations and improper disclosure of client confidences, and failure to disclose fees. The referee found as a fourth violation that Fuller provided false information to the OLPR during the disciplinary investigation. We will proceed to discuss each of the four violation categories separately.

Improper Withdrawal

The referee found that Fuller's withdrawal from representing Imprint on June 3, 1996 violated Rule 9010-3 of the Local Rules of Bankruptcy Court for the District of Minnesota. Rule 9010-3(e) requires that an attorney in Fuller's position make a motion to withdraw or file the proper substitution papers. *See* Minn. R. Bankr. P. 9010-3(e). Until an attorney complies with this requirement, he will remain the attorney of record. *See id.* The referee found that Fuller's withdrawal from representing Imprint also violated Minn. R. Prof. Conduct 1.16(c) & (d). Rule 1.16(c) requires that an attorney follow any local rules for withdrawal employed by a tribunal and Minn. R. Prof. Conduct 1.16(d) requires that an attorney continue to operate in the interests of the client while withdrawing. Fuller does not dispute that

he failed to comply with the bankruptcy court rules for withdrawal as the attorney of record. However, he asserts that he could not continue to represent Hanson and Imprint because doing so would expose him to liability for Hanson's fraudulent activity. Additionally, Fuller testified that after he notified Hanson of his withdrawal, Hanson stated that he had found alternate counsel and ordered Fuller not to do anything else.

Fuller is correct that he was required to withdraw from representing Imprint once he discovered Hanson's fraud. *See* Minn. R. Prof. Conduct 1.16(a)(1). However, despite this duty to withdraw and the pressures applied by Hanson, Fuller is still required to conform to the tribunal's procedural requirements and the Rules of Professional Conduct. Without furthering any fraud by Hanson or Imprint, Fuller could have appeared in court and made a motion to withdraw without a substitution or he could have withdrawn upon the filing of a substitution of attorney signed by the appropriate parties. *See* Minn. R. Bankr. P. 9010-3(e). Therefore, we conclude that the referee did not clearly err when he concluded that Fuller's conduct in withdrawing from the representation of Imprint was improper.

Misrepresentations and Improper Disclosures

The referee made a number of findings in support of his conclusion that Fuller violated Minn. R. Prof. Conduct 1.6(a) & (d) by revealing confidences and secrets gained during representation of Imprint and Hanson. Fuller first argues that Hanson's chemical dependency and treatment plans were not a client secret because he did not gain the information from his professional relationship with Hanson and that Hanson had given him permission to disclose the

treatment plans. Fuller also asserts that referring to Hanson's need for treatment was much less harmful to Hanson than stating that the reason for his withdrawal was due to an extensive number of improper and fraudulent activities. Hanson testified at Fuller's disciplinary hearing that he did not recall ever discussing his treatment plans with Fuller and that he never authorized Fuller to disclose his plans. The referee concluded that Fuller disclosed Hanson's treatment plans, which were a client secret as defined by Minn. R. Prof. Conduct 1.6(d).

The referee also concluded that Fuller had violated Minn. R. Prof. Conduct 1.6(d) when he disclosed that Hanson had written worthless checks. Fuller alleges that although he represented Hanson in the criminal action relating to his worthless checks, Hanson's conviction for theft by check was a public record, so it cannot be a client secret. The referee agreed with Fuller that disclosure of Hanson's conviction for theft by check did not violate the Rules of Professional Conduct; however, Fuller did not give any justification for his disclosures that Hanson continually wrote Fuller worthless checks, which the referee concluded to be disclosure of a client secret.

Fuller responds to all the charges of improper disclosure of client confidences by asserting that he was required to disclose the information so he would not be assisting Hanson in illegal activity. Minn. R. Prof. Conduct 1.6(b) provides six circumstances in which an attorney may disclose client confidences. The first exception is that an attorney may disclose a client confidence if he has the consent of the client. *See* Minn. R. Prof. Conduct 1.6(b)(1). The other exceptions relevant to this petition are that an attorney may reveal "the intention of a client to commit a crime and information necessary to prevent a crime" and

"confidences and secrets necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used." Minn. R. Prof. Conduct 1.6(b)(3) & (4). Fuller maintains that his duty to the bankruptcy court required him to disclose: (1) Hanson's inability to operate due to his alcoholism, (2) Hanson's continuing practice of issuing worthless checks, and (3) Hanson's intent to defraud Imprint's landlords. Fuller explains that throughout his representation of Hanson, parties to the actions relied on Fuller's integrity, even though they doubted Hanson's. Therefore, Fuller argues that he was required to disclose that he was not representing Hanson and that the parties should not rely on past representations of Fuller about Hanson's stability and commitment to pay his debts.

Fuller relies on Minnesota law and federal bankruptcy law for the proposition that he was required to make disclosures to all others in the bankruptcy action. *See, e.g., Hoppe v. Klapperich,* 224 Minn. 224, 240-241, 28 N.W.2d 780, 791 (1947); *In re Rivers,* 167 B.R. 288, 301 (N.D. Georgia 1994). In *Hoppe,* we concluded that an attorney is a "quasi judicial" officer and that when a client's interests conflict with the public's interests, the attorney must first fulfill his duties to the public as an offer of the court. *See Hoppe,* 224 Minn. At 240-41; 28 N.W.2d at 791. In *Rivers,* the bankruptcy court explained that when the interests of the debtor in possession conflict with those of the court and the bankruptcy estate, "it is the estate and the court to which the attorney owes his highest allegiance." 167 B.R. at 301. Fuller argues that his duties to the bankruptcy court and the bankruptcy estate overrode any state law duty to maintain Hanson's confidences. Additionally, Fuller argues, our pronouncements in *Hoppe* also dictate that he has a duty to the public to stop the ongoing fraud by his client.

While federal and state law may require—and the Rules of Professional Conduct may authorize—an attorney to disclose the ongoing fraud by a client, it is the scope and methods taken by Fuller that have created the disciplinary problem. Fuller is correct that he could have potential liability for Hanson's wrongdoing if he provided any assistance to Hanson's alleged scheme. *See Hoppe*, 28 N.W.2d at 792. However, Fuller overcompensated and disclosed more information to more persons than the law requires or the Rules of Professional Conduct authorizes.

The referee found that Fuller made unsubstantiated allegations of death threats, underreporting the sale price of some Imprint assets, gambling, and murder. Fuller testified that he believes all of his statements were truthful and that most were based on statements Hanson made to him, but Fuller is unable to provide substantiating factual support. As a result, the referee found that the disclosures by Fuller were not made for any legitimate purpose. The referee then concluded that Fuller's statements in many of the letters violated Minn. R. Prof. Conduct 3.3(a), 4.1, 4.4, 8.4(c) and 8.4(d).

Even if Fuller could prove the allegations he made in his letters, these disclosures would still need to be justified under Minn. R. Prof. Conduct 1.6(b), which limits the circumstances under which an attorney can reveal client confidences. Although it is plausible for Fuller to argue that he was required to notify the attorney for Imprint's landlords that Hanson intended to defraud them, it is less plausible for Fuller to argue he was required to notify persons, such as the Vice President and the U.S. Attorney General, of Hanson's alleged death threats to Fuller, of Hanson's "serial" bankruptcies, or of Hanson's theft of the

Imprint 401(k) monies. We agree with the referee's conclusion that Fuller made improper disclosures; therefore, we conclude the referee's findings and his conclusion that Fuller violated Minn. R. Prof. Conduct 3.3(a), 4.1, 4.4, 8.4(c), and 8.4(d) are not clearly erroneous.

Failure to Disclose Attorney Fees

The referee found that Fuller failed to disclose his attorney fee arrangement on the Imprint bankruptcy and concluded that this failure violated Fed. R. Bankr. P. 2014. Rule 2014 requires that when a bankruptcy petitioner wishes to employ a professional to assist with the bankruptcy, the petitioner must apply to the court and disclose, among other things, "any proposed arrangement for compensation." Fed. R. Bankr. P. 2014. The referee also concluded that Fuller violated Minn. R. Prof. Conduct 1.5(a), 3.3(a), 3.4(c), and 8.4(c) & (d). To support these conclusions, the referee found that Fuller knowingly failed to disclose the source of his Imprint fees, lied to the bankruptcy court in asserting that he was not requesting fees, and misled the bankruptcy court by failing to disclose that he had a relationship with Hanson because Hanson was paying his attorney fees. Fuller does not deny that he failed to disclose his fee arrangement. However, he justifies his conduct on the ground that the prior course of conduct of Hanson's other attorney, together with the bankruptcy court's and the OLPR's tacit acceptance of that failure to disclose the source of his Imprint attorney fees violated the bankruptcy rules and the Rules of Professional Conduct. We agree with the referee's findings that Fuller failed to disclose or obtain approval for his bankruptcy fees and, therefore, we conclude that the referee's conclusion that Fuller violated Minn. R. Prof. Conduct 3.3(a), 3.4(c), and 8.4(c) & (d) was not clearly erroneous.

Minn. R. Prof. Conduct 1.5(a) requires that attorney fees be reasonable and provides a number of factors to be considered, including time and labor required, the customary fee for such service, time limitations, and the expertise required. *See* Minn. R. Prof. Conduct 1.5(a). The referee made no factual findings to support his conclusion that Fuller's fee was unreasonable. The only related finding was that Hanson paid Fuller $290 a week for his services on the Imprint bankruptcy, but there is nothing in the record explaining the work performed in exchange for the fee. Therefore, we find no basis for the referee's conclusion that Fuller's fee violated Minn. R. Prof. Conduct 1.5(a).

Disciplinary Investigation

The referee concluded that Fuller submitted false or falsified evidence in the course of a disciplinary investigation in violation of Minn. R. Prof. Conduct 3.3(a)(4), 3.4(b), 8.1(a) and 8.4(c). The referee found that Fuller misled the OLPR when he provided it with letters he purportedly wrote and sent before Hanson filed the disciplinary complaint against Fuller. Fuller provided the letter to the OLPR in an effort to prove that his charges against Hanson were not in retaliation for Hanson's complaint to the OLPR. Fuller asserts that he never told the OLPR that he had mailed the letters, but his correspondence to the OLPR suggests the letters were mailed. We conclude that the referee did not clearly err when he found that Fuller misled the OLPR with these letters.

II.

The referee has recommended that Fuller be suspended from the practice of law indefinitely, with a 1-year minimum term of suspension, and that Fuller successfully complete a mental health evaluation and follow all

complete a mental health evaluation and follow all recommendations of the evaluation. Although we afford great weight to the referee's recommendation for attorney discipline, we alone bear the final responsibility to determine what discipline is appropriate. *See In re Klein*, 442 N.W.2d 317, 321 (Minn. 1989). In light of the purposes of attorney discipline—to protect the public, to protect the legal profession, and to guard the administration of justice—we determine the appropriate discipline by considering "(1) the nature of the misconduct, (2) the cumulative weight of the rule violations, (3) the harm to the public, and (4) the harm to the legal profession." *In re Madsen*, 426 N.W.2d 434, 436 (Minn. 1988). We also consider mitigating and aggravating circumstances. *See In re Haugen*, 543 N.W.2d 372, 375 (Minn. 1996).

The referee found some aggravating factors when reaching his recommended disposition. Fuller had been "warned that his letter-writing campaigns could form the basis for serious discipline." Further, Fuller acknowledged at his hearing that persons had asked him if he would like to have Hanson "whacked," to which he responded, "Not yet." However, Fuller did attempt to clarify this statement by explaining that he never would have harmed Hanson.

The referee also found mitigating circumstances. The referee stated that Fuller obviously suffers from a mental illness or disability that impairs his judgment. The referee based this conclusion on the opinion of the psychiatrist who evaluated Fuller and Fuller's conduct during the disciplinary proceedings. The referee noted that Hanson may be a "scalawag," but Fuller appears unable to make rational judgments when they involve Hanson.

Our general rule is that mental illness is a mitigating factor that an attorney must raise. *See In re Weyhrich*, 339 N.W.2d 274, 279 (Minn. 1983). An attorney who raises a psychological disability must prove five factors: (1) that the attorney has a severe psychological problem; (2) that the psychological problem was the cause of the misconduct; (3) that the attorney is seeking treatment; (4) that the treatment has arrested the misconduct; and (5) that the misconduct is not likely to recur. *See id.* Although Fuller has not acknowledged having a psychological disorder and is not seeking treatment, the OLPR admits in its brief that Fuller meets the first two requirements of the *Weyhrich* test.

For guidance in determining the appropriate sanction, we turn to cases involving similar misconduct. *See In re Madsen*, 426 N.W.2d at 436. With the exception of a possible unrecognized psychological issue, we were faced with similar ethics violations in *In re Nelson*, 327 N.W.2d 576, 578-79 (Minn. 1983). In *Nelson*, we suspended an attorney for 6 months because he exposed confidential client information and fabricated information in letters to the probate court, tax authorities, and the Minnesota Securities Division. *See id.* at 580. The referee in *Nelson* found that the violations were intentional and cost the attorney's clients thousands of dollars. *See id.* at 579. While Fuller also acted intentionally, the present case is different because there are no allegations or findings that Fuller's actions caused any financial loss to Imprint or Hanson.

We also have reviewed cases which involve harassment of a client by the client's attorney, but generally in such cases there also have been additional unrelated violations. For example, in *In re Mueller*, 540 N.W.2d 77, 78 (Minn. 1995), we imposed a public reprimand and 2 years of probation on an attorney who was making harassing phone calls to a

client, which conduct resulted in a misdemeanor conviction. *See id.* Mueller entered into a stipulation with the OLPR that involved ongoing therapy and other conditions. *See id.* We accepted the stipulation and ordered the recommended sanction because Mueller's sanction included the psychological treatment necessary to arrest his inappropriate behavior. *See id.*

In *In re Selmer*, we suspended an attorney, who was already on probation, for 1 year when it was discovered that over a 12-year period he had instituted harassing and frivolous litigation and had made false and misleading statements in response to discovery requests. *See* 568 N.W.2d 702, 704-05 (Minn. 1997). *Selmer* is different from Fuller's case because Selmer instituted a number of frivolous suits and frivolous defenses to benefit himself. *See id.* However, the cases are similar in that both involve a variety of Rules of Professional Conduct violations and evaluating the cumulative effect of such violations. *See id.* In concluding that Selmer should be suspended from the practice of law for a minimum 1-year term, we were convinced that his abuse of the litigation process and lack of candor with the tribunal required such a sanction. *See id.* When we look to *Selmer* for guidance, we conclude that although Fuller has multiple violations, he has not shown the disrespect for the integrity of the judicial system that Selmer did.

Our review of prior discipline cases shows that we have not yet addressed a situation where there is misconduct similar to Fuller's that may be accompanied by an unacknowledged psychological problem. Further, even though Fuller has not acknowledged having a psychological problem, the OLPR has admitted that Fuller's misconduct was caused by an unacknowledged psychological problem. In a situation such as this, we see no reason not to consider a psychological

problem in determining the appropriate sanction. Although Fuller did not assert that his psychological condition is a mitigating circumstance, his failure to do so should not bar us from considering the role the condition played in the misconduct because we conclude that if Fuller addresses the symptoms that suggest he may have a psychological problem, he may be able to competently and diligently serve his clients. Therefore, we not only conclude that Fuller has committed misconduct that warrants imposition of a sanction, but we also conclude that Fuller's possible psychological problem needs to be addressed in the sanction.

We conclude that the appropriate discipline is indefinite suspension with reinstatement conditioned on providing adequate psychological or other medical evidence establishing that Fuller has no psychological problem that would prevent him from practicing law competently, diligently, and within the rules of conduct for attorneys at law. Fuller may petition for reinstatement at any time upon an adequate showing that the problem that led to his misconduct has been treated such that it no longer interferes with his ability to practice law. Accordingly, we order that:

1. Fuller is hereby suspended from the practice of law indefinitely with no minimum term of suspension, commencing 14 days from the date of this order;

2. Fuller comply with the requirements of Rule 26, RLPR;

3. Before reinstatement, Fuller must provide the director with adequate psychological or other medical evidence establishing that he has no psychological problem that would prevent him from practicing law competently,

4. Fuller must comply with the procedures for reinstatement under Rule 18, RLPR;

5. Fuller shall pay to the Director the sum of $900 in costs and disbursements pursuant to Rule 24, RLPR.

So ordered,

BLATZ, C.J., and GILBERT, J., took no part in the consideration or decision of this case.

Footnotes

[1] The bankruptcy was originally filed for a company called Safety Line, Inc. It was later amended to Imprint Technologies, Inc. There were actually a number of Imprint bankruptcy filings, but the September 1995 filing is the one relevant to this petition.

[2] Hanson was eventually convicted of improper allocation of 401(k) funds.

[3] While it is the conduct of Fuller that is the issue before the court, some of Hanson's actions warrant mention. Hanson has been involved in disciplinary proceedings against his previous attorney and threatened to file a disciplinary complaint against the attorney for Imprint's landlord. According to an affidavit by Pamela Jordan, Hanson was "quite pleased or rather smug" when he filed ethics charges against Fuller. As recently as May 2000, Hanson was requesting to be listed as an interested party on all bankruptcy proceedings in which Fuller was the attorney of record. Hanson copied Fuller on each of these requests and noted that until Fuller obtained a court order requiring Hanson to cease this activity, he would continue to seek out all of Fuller's clients and send them copies of the OLPR's petition and recommendations.

U.S. Department of Justice
Criminal Division
Washington, D.C. 20530

October 3, 1997

Don B. Fuller, Esquire
420 Minnesota Law Center
514 Nicollet Mall
Minneapolis, MN 55402

Dear Mr. Fuller:

Thank-you for your letter to the Attorney General dated July 14, 1997. Your correspondence sets forth specific allegations of bankruptcy fraud and theft from an employee pension benefit plan by Brett R. Hanson. The Federal Bureau of Investigation is authorized to investigate both bankruptcy fraud and pension plan theft. Consequently, we have referred your correspondence to the FBI for their review. In addition, we have referred your correspondence to the Pension and Welfare Benefits Administration of the United Stated Department of Labor which is authorized to investigate criminal abuses in connection with the operation of employee pension plans. Any evidence of criminal activity which may developed by these agencies will be referred to the Department of Justice for consideration of possible criminal prosecution.

Sincerely,

Gerald A. Toner, Assistant Chief
For Labor Racketeering
Organized Crime and
Racketeering Section
Rebecca K. Pyne, Attorney
Labor-Management Racketeering Unit

DON BEDELLE FULLER, Chartered
Attorney at Law

420 Minnesota Law Center
514 Nicollet Mall
Minneapolis, MN 55402

August 3, 1998

Mr. Paul Hannah, Esq.
2625 Firstar Building
101 East Fifth Street
Saint Paul, MN 55101

Mr. Ed Cleary, Director and Mr. Patrick Burns
Lawyer's Board of Professional Responsibility
25 Constitution Avenue - 1st Floor
Saint Paul, MN 55105

Dear Mr. Cleary, Mr. Burns and Paul:

I ask that the Lawyer's Board view me and my actions with the following realizations:

1. That when the Complainant threatened my life first in 1990/1991 and many times thereafter all bets were off and I became empowered to fight back with words; at all times, I have only responded defensively to the Complainant's continuing actions and lies.

2. That as a licensed attorney for more than 27 years I am entitled to certain presumptions concerning my practice and my relationships with my clients and the Board must also entertain and maintain certain presumptions about a Complainant who has

"engineered" 13 "serial" personal or corporate bankruptcies since 1988.

3. That as a former military judge continuously so certified for more than 20 years I am more worthy of belief than the Complainant who is a federal convicted felon.

4. That as a retired United States Marine Colonel with a top secret clearance base don a full background investigation I am more worthy of belief that the Complainant who is well known as a pathological liar with a drug dependency.

5. That Patrick Burns has thwarted my duties to report bankruptcy fraud and indirectly facilitated the Complaint's two most recent "serial" bankruptcies which in just one case cost creditors more than 1.2 million dollars.

When Brett Hanson called my home on July 28, 1998, I then took lawful steps to isolate his ability, through a request for a federal restraining order, to communicate further threats of harm. With some understanding that the Complaint will do time in a federal prison, I have begun to again enjoy my life.

However, it pains me to know that the Complainant, who is well known for bilking so many attorneys out of their fees, is still getting a free hit at my practice through his most recent and present surrogate, Patrick Burns.

Very truly yours,

Don B. Fuller

THE SUPREME COURT OF MINNESOTA
MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
SAINT PAUL, MINNESOTA 55155

August 9, 1999

Mr. Don B. Fuller
Fuller Law Offices, Ltd.
Suite 250
Fifth Street Towers
100 South Fifth Street
Minneapolis, MN 55402

Dear Mr. Fuller:

Thank you for your letter of August 2, 1999, regarding the *Hoppe v. Klapperich* decision. You are correct in your statement that lawyers are expected to be officers of the court and not just "hired guns." I know that there have been many hours in recent years devoted to this very topic at CLEs as well as at other less formal bar gatherings. Issues of civility, professionalism, and ethical considerations affecting the profession of law have been of great concern to many and reflect your expressed views.

Accordingly, I would encourage you to direct any comments you have on this subject to the Lawyers Professional Responsibility Board as well as to Ms. Peg Corneille, the director of the Board of Continuing Legal Education. While you request my involvement to have the Board cite to a particular opinion in their course books, etc., I respectfully decline primarily for the reason that I am confident that the Board is aware of the problem and the

need for the highest professional standards in the profession of law. Also, it is not my style to micromanage at that level. Again, I appreciate your input.

Very truly yours,

Kathleen A. Blatz
Chief Justice

Primary Behavioral Health Clinics, Inc.
Telephone Answered 24 Hours
(612) 378-2363
FAX (612) 378-2215

Mailing Address:
Broadway East Bldg.
Suite 160
3433 Broadway St. NE
Minneapolis, MN 55413

February 7, 2001

To Whom It May Concern:

RE: Donald Fuller

I have met with Mr. Donald Fuller, a 57-year old lawyer, for the purposes of conducting a psychological evaluation. Mr. Fuller is currently involved in disputed matters with the Lawyer Professional Responsibility Board. Part of the agreement to reinstate his license is for him to undergo a psychological evaluation. I have not had any previous contact with Mr. Fuller and I have seen him on two occasions as part of this evaluative process, and have administered and interpreted a number of standardized psychological tests that are used in arriving at my opinion.

Mr. Fuller provided me with a number of documents, many of which relate to the legal problems that he is having with the Board, and it is my opinion that these documents are not relevant to my opinion regarding his psychological status. What is of interest and relevant are the number of testimonials provided by various professionals on his behalf.

With respect to the testing, Mr. Fuller is a very intelligent man and scored in the "superior" range on an intelligence test provided through this office. His basic psychological checklist revealed an individual who is stressed with his work and who has had significant problems with others' use of alcohol and drugs. Mr. Fuller indicates that he is practically a non-user of alcohol and is not using any non-prescriptive medication.

The MMPI 2 was administered to Mr. Fuller and revealed a valid profile suggesting he was open and honest in his test-taking behavior. With respect to his clinical scales, his scores were well within normal limits suggesting this individual is essentially symptom free at this point in his life. Subscale analysis revealed that he is experiencing a significant amount of "fear," and likely this relates more to the various legal proceedings.

When I asked Mr. Fuller what he felt he needed, he indicated that he was concerned about the issues related in his law practice and was concerned that there, in fact, were people who were making life difficult for him (not including the Board). He realizes that he needs to deal more effectively with some of these outside sources and recognizes that he could certainly utilize some psychological counseling to help him deal more effectively with the stressors in his life. When I suggested we could provide such a service for him through this office, he was very open and responsive to this and indicated that while this is not necessarily a requirement of the Board, he would be open and willing to enter into a counseling arrangement with me. Thus, it will likely occur and will be up to Mr. Fuller to decide how he deals with in this arrangement with the Board.

In summary, it would be my opinion that I don't see any signs of psychological problems based on the testing, reading of his records, and my direct examination of Donald Fuller; however, given the nature of the stress that he has experienced in going through this process with the Board while attempting to maintain his practice, I think he would be well advised to enter into some psychotherapy for a period of six to twelve months. I would be happy to provide this service for him or would certainly be willing to provide him with a list of competent therapists who would be skilled in dealing with his situation with him.

This completes my evaluation and opinion of Donald Fuller; however, if there is any additional information I can provide relative to this matter, please do not hesitate to contact me directly. All the opinions expressed in this report are made after careful review of his records, direct evaluation, and my administration and interpretation of the standardized psychological tests. All the opinions expressed are made within a reasonable degree of psychological certainty based on my education, training, and experience.

John Patrick Cronin, Ph.D., M.P.H.
Licensed Psychologist
Clinical Director
Diplomate, American College of Forensic Examiners

JPC:cs